THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.5361 of 1995

Dated 18-03-2006

Between:

The Depot Secretary, APSRTC National Mazdoor Union, Midhani Depot, rep. by Sri M.A.Khadir.

..... PETITIONERS

AND

The APSRTC, rep. by its Managing Director, Mushirabad, Hyderabad & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.5361 of 1995

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O R D E R:

The Depot Secretary, APSRTC National Mazdoor Union, Midhani Depot, questions the action of the second respondent in issuing proceedings dated 18-03-1995, imposing penal wage cut for three days from the salary of 109 drivers and 94 conductors, members of the petitioner-Union, for participating in the strike from 11-11-1994 to 13-11-1994 as illegal, an act of victimization, unfair practice and without jurisdiction.

Facts, to the extent necessary for this writ petition, are that a strike notice dated 29-10-1994 was served on the second respondent on 30-10-1994 informing that the members of the petitioner-Union would go on strike if their demands were

not considered. A list of 15 demands were submitted in this regard. On the ground that one of the office bearers of the petitioner-Union was transferred, members of the petitioner-Union resorted to strike for three days from 11-11-1994 to 13-11-1994. According to the petitioners, the strike was called off after discussions on various demands and that the second respondent, by order dated
13-11-1994, had agreed to treat the strike period as “no work no pay” and that no action would be taken against employees who had participated in the strike. Petitioner-Union would contend that despite the order dated 13-11-1994, a show cause notice dated
21-12-1994 was issued calling upon the petitioners to submit their explanation, and that the second respondent having agreed to treat the strike period as “no work no pay” was not entitled to issue the impugned order dated 18-03-1995, imposing penal wage cut for three days apart from treating the strike period as “no work no pay”.

Petitioners would urge that the second respondent had invoked the provisions of the Payment of Wages Act, 1936 and that the provisions of the said Act were not applicable to members of the petitioner-Union inasmuch as all of them were drawing a monthly salary far in excess of Rs.1,600/- per month. Reference is made to W.P.No.19600 of 1994, wherein this Court, by order dated 28-12-1994, held that the second respondent, having agreed to treat the period of strike as ‘no work no pay,’ had no power or authority to impose a penal wage cut and that the provisions of the Act were not applicable to employees drawing a salary more than Rs.1,600/- per month. Pursuant to the show cause notice dated 21-12-1994, and on receipt of the explanation submitted by the petitioners herein, the impugned order for penal wage cut was passed on 18-03-1995.

Respondents, in their counter affidavit, would state that the Depot Secretary, APSRTC National Mazdoor Union, Midhani Depot had served a strike notice dated 29-10-1994 on 30-10-1994 proposing to go on strike on or after 15-11-1994 with regards certain demands annexed to the notice. Respondents would contend that though the strike notice stated that the workers would go on strike on or after 15-11-1994, they however chose to go on strike from
10-11-1994 itself, that the strike was illegal and contrary to Section 22(1) of the Industrial Disputes Act, 1947 (for short ‘the Act’). It is stated that the transfer of the employee had been processed prior to serving the strike notice and that the employee concerned had been transferred on administrative grounds. Respondents

would deny that the second respondent had agreed, by order dated 13-11-1994, that no action would be taken against the workers who participated in the strike. Respondents would state that since the strike is illegal, imposition of penal wage cut is in accordance with law and is justified in the circumstances of the case. Respondents would submit that since the APSRTC is a public utility service, any illegal strike would cause inconvenience to the travelling public, apart from financial loss to the Corporation. They would state that since the demands of the petitioner-Union were of such a nature, which could have been sorted out only in the normal course, the petitioner-Union ought not to have resorted to strike and the penal wage cut imposed is in accordance with law and justified in the circumstances of the case.

A perusal of the impugned penal wage cut order dated 18-03-1995 would show that the strike from 11-11-1994 was held to be contrary to Section 22(1) of the Act read with Section 24 thereof, that the strike was contrary to G.O.Ms.No.278, dated
29-10-1994 since strikes were prohibited in the APSRTC for six months from 04-11-1994, in terms of Section 3(1) of the AP Essential Services Maintenance Act, 1971. The order would reflect that the Corporation sustained loss of revenue to a tune of Rs.1.5 lakhs in addition to the image of the Corporation being tarnished. While taking note of the fact that under Section 9(2) of the Payment of Wages Act, employees who participated in the strike from
11-11-1994 to 13-11-1994 were liable for penal wage cut upto eight (8) days in addition to recovery of wages for the strike period from those who had gone on strike illegally.
The show notice called upon the employees to show cause as to why eight days penal wage cut should not be imposed. After considering the explanation submitted by the employees, the second respondent concluded that a penal wage cut of three days be imposed in addition to denial of wages for these three days.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, would submit that since the very order imposing penal wage cut is said to be under Section 9(2) of the Payment of Wages Act and inasmuch as the provisions of the said Act have no application to employees whose monthly salary is in excess of Rs.1,600/-per month and as, it is not in dispute that the employees of APSRTC including members of the petitioner-Union are drawing a monthly salary far in excess of Rs.1,600/-, the provisions of Payment of Wages Act have no application and consequently, the

impugned order dated
18-03-1995 imposing a penal wage cut of three days purported to have been issued under Section 9(2) of the Payment of Wages Act, is without jurisdiction. Learned counsel would place reliance on **Tyre Retreading Shop Committee V. APSRTC**.

Sri V.T.M.Prasad, learned standing counsel for the respondent-Corporation, on the other hand, would place reliance on Section 22 of the Act, which relates to Prohibition of strikes and lock-outs. Under sub-section (1) thereof, no person employed in a public utility service shall go on strike in breach of contract within 14 days of giving notice in this regard. Learned counsel would submit that since the notice was received by the Corporation on 30-10-1994 and since it was stated in the notice itself that the petitioner would be going on strike from 15-11-1994 onwards their striking work from 11-11-1994 to 13-11-1994, well within the 14 days period prescribed under clause (b) of Section 22(1) of the Act, was clearly illegal. Learned counsel would refer to Section 24(1) of the Act, wherein a strike or a lock-out if commenced in contravention of Section 22 or Section 23 is illegal.

While the submission of Sri V.T.M.Prasad, learned standing counsel for the respondent-Corporation, that the strike resorted to by the petitioner-Union from 11-11-1994 to 13-11-1994 is contrary both to the strike notice dated 29-10-1994 and to the provisions of Section 22 and 24 of the Act, is not without merit, the question which arises for consideration is the consequence of such an illegal strike. The power of the APSRTC to impose a penal wage cut is traced to Section 9 of the Payment of Wages Act, which relates to deduction for absence from duty and reads thus:

1. Deductions may be made under clause (b) of sub-section (2) of Section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

2. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a large proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

   Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the

> notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Under sub-section (2) concerted abstention from duty, without reasonable cause, would enable the employer to deduct from any such person, wages for the period not exceeding eight days. The Payment of Wages Act, as is clear from Section 1(6) thereof, does not apply to wages payable in respect of a wage period which, over such wage-period, averages, Rs.1,600/- per month. It is not in dispute that employees of the APSRTC, including the members of the petitioner-Union, all draw a monthly salary far in excess of Rs.1,600/- per month and as such, the provisions of the Payment of Wages Act are not applicable.

In this context, this Court in **Tyre Retreading Shop Committee**[1], following the earlier judgments of this Court in W.P.No.4346 of 1992, dated 13-11-1992; W.P.No.3878 of 1996, dated 14-08-1996; W.A.No.3 of 1995 and batch, dated 08-04-1996; W.P.No.12017 of 1992 and batch, dated 02-05-1995, held thus:

> " It is, therefore, clear that this Court took consistent view that the respondent-Andhra Pradesh State Road Transport Corporation has no authority in law to proceed against such of its employees, who are drawing monthly wages of Rs.1,600/- and more, under the provisions of the Act. The legal position is so obvious and there is no scope for taking any other view other than the one taken by this Court. However, it would be entirely a different matter altogether, where the dispute centers around quantum of wage cut. In such a case, the matter may have to be required to be adjudicated in a properly constituted Forum before the Industrial Tribunal, under the provisions of the Industrial Disputes Act, 1947".

Since the order of penal wage cut, passed in exercise of the powers conferred under Section 9(2) of the Payment of Wages Act, is an order without jurisdiction inasmuch as the Payment of Wages Act itself has no application to employees of APSRTC, the impugned order is liable to be set aside. It is therefore

wholly unnecessary for this Court to examine as to whether the Depot Manager, who issued the impugned order, had or not agreed to impose any penal wage cut on employees of the APSRTC or on the members of the petitioner-Union.

The writ petition is allowed and the impugned order dated 18-03-1995 is set aside. However in the circumstances without costs.

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21-03-2006

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